

# Dispute Resolution . . .

*Occupational Disease Panel*

*Mediation*

*Contested Case Hearings*

*Workers' Compensation Court*



## **Occupational Disease Panel**

The Claims Unit of the Employment Relations Division (ERD) is responsible for the occupational disease (OD) panel process. The panel process is designed to resolve questions between a claimant and insurer as to whether the claimant's condition is a result of the employment. Diagnosing an OD and assigning a cause can be difficult. This process involves a panel of up to three doctors who provide opinions. Based on the doctors' opinions, ERD then issues a determination. The determination states whether the claimant's condition is caused from employment and if, therefore, the claimant is entitled to occupational disease benefits. Average processing time for the OD panel was 107 days during FY99. This average includes second and third requests and mandatory waiting periods.

Disputes over the determination are appealed to the Hearings Unit of the Department of Labor and Industry.

### **Occupational Disease Panel By Fiscal Year**

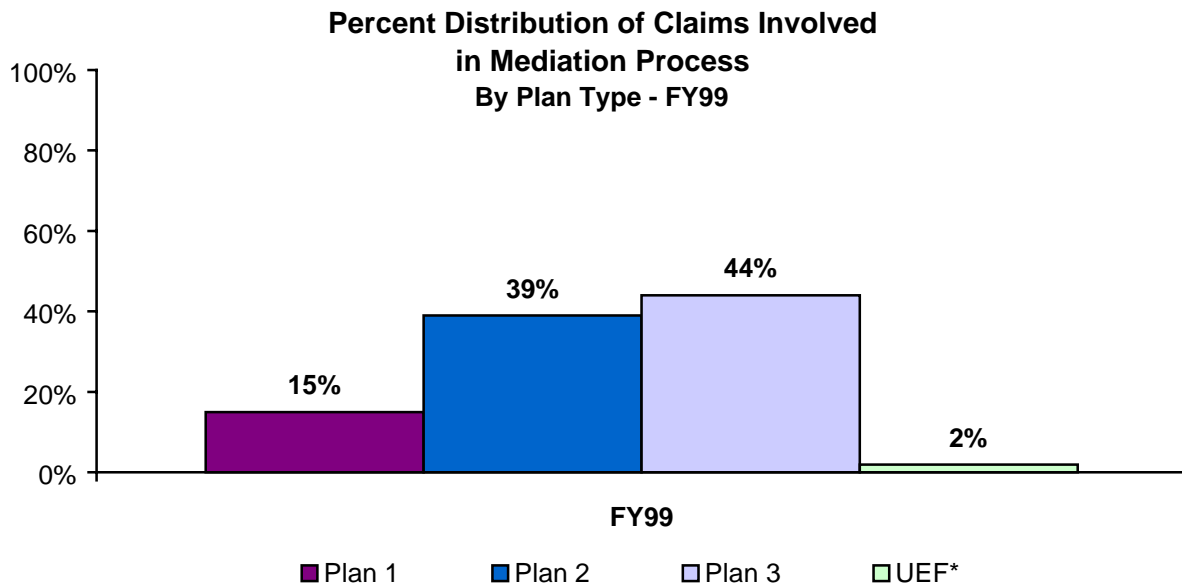
	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>
<b>Panel Requests:</b>	<b>402</b>	<b>431</b>	<b>436</b>	<b>265</b>
<b>Appealed after First Exam:</b>	<b>41</b>	<b>52</b>	<b>51</b>	<b>27</b>
by Claimant	7	8	1	9
by Insurer	34	44	50	18
<b>Second Exam Requested:</b>	<b>31</b>	<b>26</b>	<b>25</b>	<b>17</b>
by Claimant	8	4	1	5
by Insurer	23	22	24	12
<b>Cases Appealed to the Hearing Unit:</b>	<b>68</b>	<b>61</b>	<b>66</b>	<b>39</b>
<b>Cases Appealed to WCC:</b>	<b>7</b>	<b>7</b>	<b>11</b>	<b>17</b>
<b>Panel results:</b>				
Claims Accepted	224	245	230	132
Claims Denied	83	92	92	51
Canceled, Withdrawn or Dismissed	78	65	94	67
<b>Cases Closed:</b>	<b>385</b>	<b>402</b>	<b>416</b>	<b>265</b>

Effective April 23, 1999, a legislative change altered the OD process. Occupational Disease claims with dates of injury prior to April 23, 1999 can elect to remain in the contested case process or may choose the new process with one independent examination.

**39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability...** Applies retroactively to occupational diseases occurring before April 23, 1999 unless a party elects, after notification by the Department of Labor and Industry, to remain in the contested case process. Eliminates the three step procedure and replaces it with one independent examination and a report from the evaluator. If a dispute exists regarding the compensability of an occupational disease claim, the jurisdiction is transferred from the Department's Contested Case Hearing process to mediation and then to the Workers' Compensation Court.

## *Mediation*

The Workers' Compensation Mediation Unit of the Employment Relations Division provides a mandatory process for resolving disputes dealing with benefits for both occupational injury and accepted occupational disease claims. The mediation process is confidential, non-binding, and informal. The mediator facilitates the exchange of information between the parties and assists with solutions aimed at resolving the dispute. Conferences are held either in person in Helena or by telephone conference call. Often, more than one conference is held in order to resolve the disputes on a claim. In Fiscal Year 1999, the Mediation Unit received and processed 1,182 petitions.



**Notes:**

\*UEF means Uninsured Employers Fund.

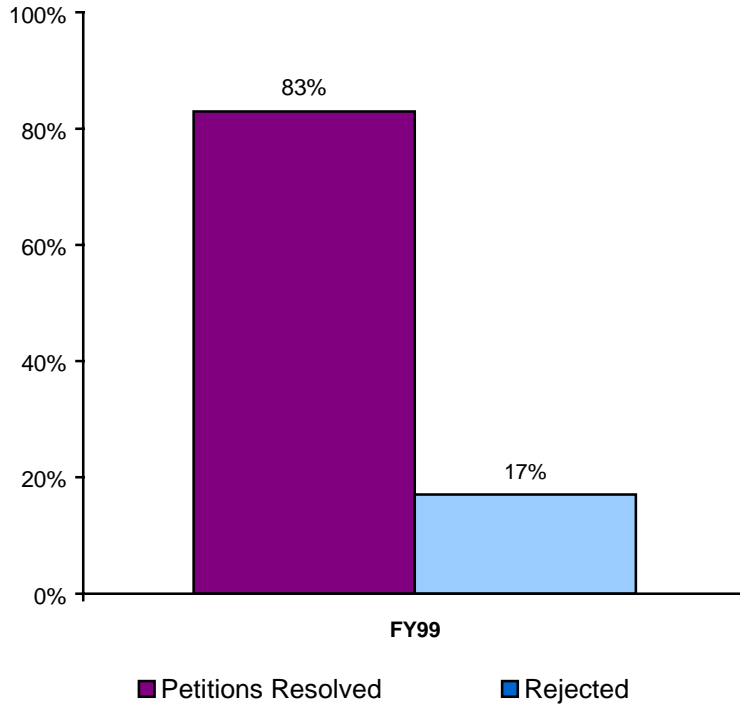
**Percent Distribution of Claims Involved  
in Mediation Process  
By Plan & Fiscal Year**

	FY96	FY97	FY98	FY99
<b>Plan 1</b>	14%	13%	16%	15%
<b>Plan 2</b>	31%	34%	35%	39%
<b>Plan 3</b>	53%	50%	46%	44%
<b>UEF*</b>	2%	3%	3%	2%
<b>Total Percent</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Total Count</b>	<b>858</b>	<b>857</b>	<b>913</b>	<b>1,182</b>

**Notes:**

\*UEF means Uninsured Employers Fund.

**Percent Distribution of Petitions Resolved  
in FY99**



- Mediation has an approximate resolution rate of 83%.
- Mediation took an average of 32 days to complete a case for which a conference was held and a written recommendation issued.

**Distribution of Petitions Received  
By Fiscal Year**

	FY96		FY97		FY98		FY99	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent
<b>Petitions Resolved</b>	680	79%	673	79%	688	79%	674	83%
<b>Recommendation Rejected</b>	176	21%	178	21%	183	21%	135	17%
<b>Total Petitions Resolved</b>	<b>856</b>	<b>100%</b>	<b>851</b>	<b>100%</b>	<b>871</b>	<b>100%</b>	<b>809</b>	<b>100%</b>
<b>Resolved/Rejected</b>	856	99%	851	99%	871	95%	809	74%
<b>Petitions Pending*</b>	2	1%	6	1%	42	5%	281	26%
<b>Total Petitions Received</b>	<b>858</b>	<b>100%</b>	<b>857</b>	<b>100%</b>	<b>913</b>	<b>100%</b>	<b>1,090</b>	<b>100%</b>

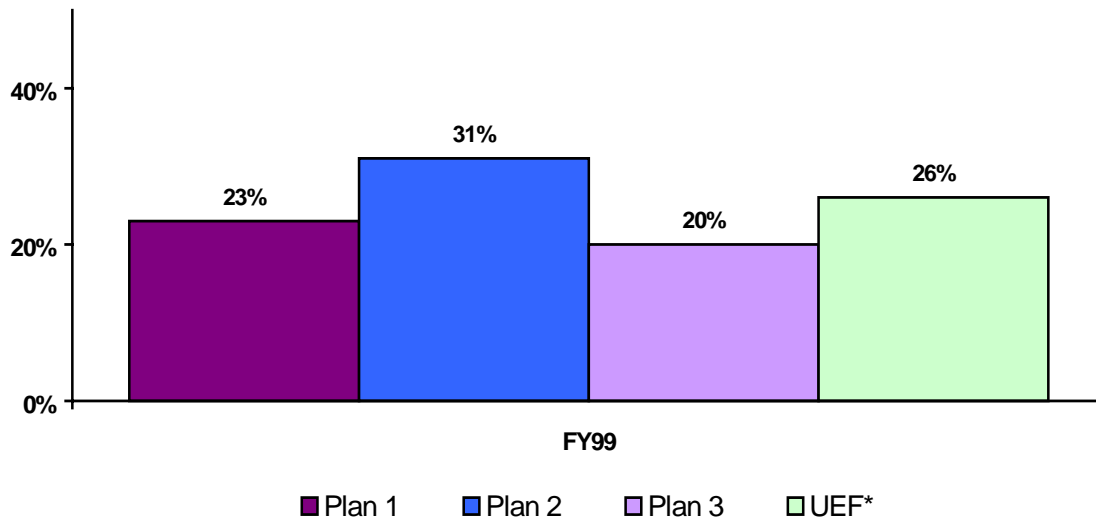
**Notes:**

\*Eventual outcome of pending petitions will affect percent resolved.  
Petitions may represent multiple claims and multiple plans.

## Contested Case Hearings

The Department of Labor and Industry's Hearings Bureau holds contested case hearings. Disputes heard at contested case hearings include appeals from orders and determinations issued by ERD, and medical disputes between providers and insurers when payments to the claimant are not an issue. For Fiscal Year 1999 (FY99) the Hearings Unit received 69 requests for contested case hearings. Twelve hearing cases were held in FY99. Fifty-six petitions had been closed or settled as of 6/30/99.

**Percent Distribution of Petitions Received  
By Plan Type - FY99**



**Distribution of Petitions Received  
By Plan Type**

	FY96		FY97		FY98		FY99	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent
<b>Plan 1</b>	12	10%	10	8%	12	11%	16	23%
<b>Plan 2</b>	28	22%	32	27%	43	38%	21	30%
<b>Plan 3</b>	57	46%	48	40%	33	29%	14	20%
<b>UEF<sup>1</sup></b>	28	22%	30	25%	26	23%	18	26%
<b>Underinsured*</b>	1	0%	1	0%	NA	NA	NA	NA
<b>Total</b>	<b>126</b>	<b>100%</b>	<b>121</b>	<b>100%</b>	<b>114</b>	<b>100%</b>	<b>69</b>	<b>100%**</b>

**Notes:**

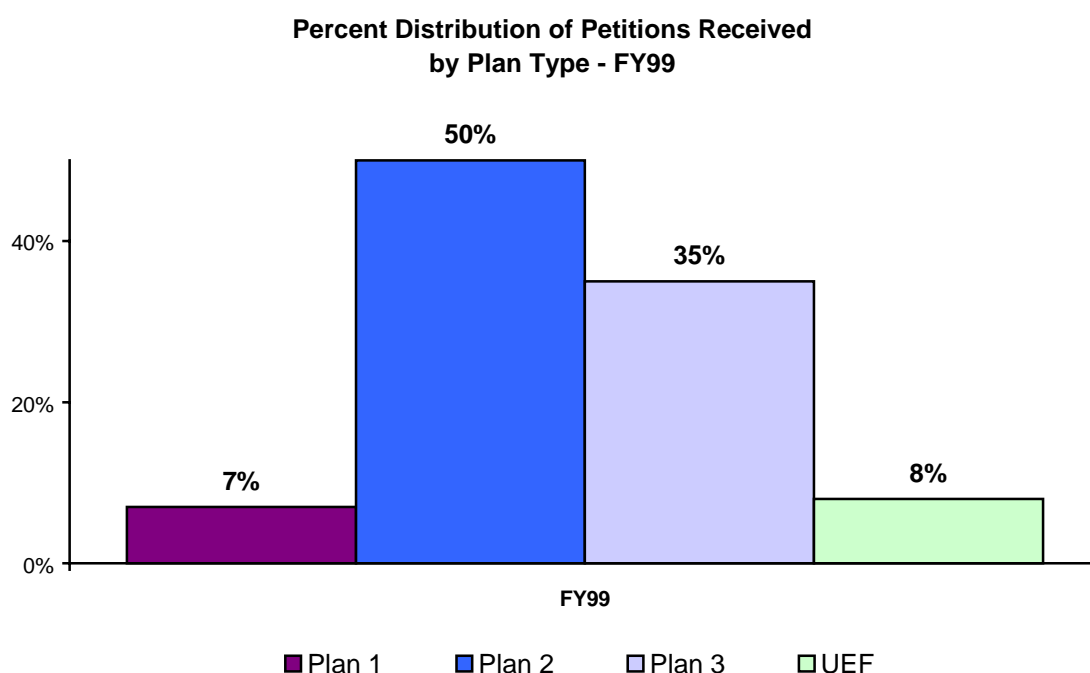
\*Underinsured was repealed in 1997.

\*\*Columns may not sum 100% due to rounding.

<sup>1</sup>UEF means Uninsured Employers Fund.

## Workers' Compensation Court

The Workers' Compensation Court resolves disputes between insurers/employers and injured workers, and for workers disabled as a result of an occupational disease. The Court has original jurisdiction over benefit issues under the Workers' Compensation Act and the Occupational Disease Act. For an injury occurring after July 1, 1987, the controversy must first be mediated. In cases of original jurisdiction the Court holds a trial. The Court has appellate jurisdiction over decisions of the Department of Labor and Industry involving other workers' compensation and occupational disease controversies. Additionally, the Court conducts judicial review over decisions of the Classification and Review Committee (Commissioner of Insurance) regarding classification of employees.



### Distribution of Petitions Received By Plan Type

	FY96		FY97		FY98		FY99	
Plan Type	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Plan 1	23	10%	20*	10%	18*	7%	18*	7%
Plan 2	102	45%	92*	44%	98*	40%	136*	50%
Plan 3	98	43%	89*	43%	116*	47%	95*	35%
SIF <sup>1</sup>	1	0%**	0	-	1	0%**	0	-
UEF <sup>2</sup>	4	2%	6*	3%	13*	5%	21*	8%
<b>Total by Plan</b>	<b>228</b>	<b>100%</b>	<b>207*</b>	<b>100%</b>	<b>246*</b>	<b>100%</b>	<b>270*</b>	<b>100%</b>
<b>Total Cases</b>	<b>228</b>	<b>100%</b>	<b>202</b>	<b>100%</b>	<b>235</b>	<b>100%</b>	<b>266</b>	<b>100%</b>

**Notes:**

\*Petitions involving more than one plan account for the higher totals.

\*\* Less than one percent.

<sup>1</sup>SIF means Subsequent Injury Fund.

<sup>2</sup>UEF means Uninsured Employer Fund.

**Distribution of Decisions  
By Fiscal Year**

	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>
<b>Bench Rulings w/out written decisions</b>	2	1	2	3
<b>Decisions</b>	61	52	45	61
<b>Orders on Appeal</b>	15	5	9	4
<b>Substantive Orders</b>	38	40	52	22
<b>Attorney Fee Orders</b>	9	6	3	2
<b>Orders on Cost</b>	11	9	8	13
<b>Disposed of by Telephonic Conference</b>	--	6	6	-
<b>Subtotals</b>	136	119	125	108
<b>Petitions Dismissed by Agreement</b>	157	135	155	157
<b>Totals</b>	<b>293</b>	<b>254</b>	<b>280</b>	<b>265</b>

